

MGB FILE NUMBERS      16/IMD-03  
                                 16/IMD-04

**IN THE MATTER OF INTERMUNICIPAL DISPUTES –**

**APPEALS FILED UNDER S.690 OF THE MUNICIPAL GOVERNMENT ACT,  
RSA 2000, c.M-24 BY THE TOWN OF DRAYTON VALLEY AGAINST  
BRAZEAU COUNTY BYLAW 892-15 AND BYLAW 905-16**

**Bylaw 892-15, An Amendment to Brazeau County Land Use Bylaw to change the  
designation from Agriculture to Direct Control District on portions of the E 1/2 of 3-  
49-7-W5M**

**Bylaw 905-16, Brazeau County Land Use Bylaw**

BETWEEN:

INITIATING MUNICIPALITY:    TOWN OF DRAYTON VALLEY

v.

RESPONDENT MUNICIPALITY    BRAZEAU COUNTY

DOCUMENT                            **TOWN OF DRAYTON VALLEY  
WRITTEN SUBMISSIONS AND AUTHORITIES**

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**Application  
Scheduled for May 2-4, 2017**

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## I. INTRODUCTION

### Overview

- 1.) This preliminary hearing on the s.690(4) *Municipal Government Act* (“MGA”) jurisdictional issue will either fully resolve both Appeal 16/IMD-03 and Appeal 16/IMD-04 or confirm the need for a merit hearing in both appeals.
- 2.) The MGB must decide how to interpret and apply s.690(4) of the MGA. In particular, the MGB must decide whether s.690(4) makes repeal of a bylaw under appeal impossible.
- 3.) In Appeal 16/IMD-04, regarding Bylaw 905-16, the County submits that s. 690(4) cannot operate to fetter municipality from continuing to exercise its legislative powers, including a repeal of the appealed bylaw.
- 4.) In Appeal 16/IMD-03, the County relies on a suspensory and preservative interpretation of s.690(4) to shield Bylaw 892-15 from the effect of a repeal.
- 5.) The Town submits that s.690(4) of the MGA must be interpreted and applied consistently in both appeals. A selective application of s.690(4) is not supported by the language of the section or the facts of either appeal.

### Background

- 6.) The background to both appeals arises out of the Town of Drayton Valley’s (“the Town”) concerns regarding detrimental impacts resulting from Brazeau County (“the County”) Land Use Bylaw provisions affecting lands within the referral area created by the Intermunicipal Development Plan (“IDP”) adopted by the Town and the County.

- 7.) Specifically, the County's Bylaw 892-15 and Bylaw 905-16 elevate the status of the Outdoor Storage Facility Use from that of Discretionary Use to that of Permitted Use within the IDP referral area.
- 8.) The IDP referral area is significant to the Town for many reasons, including:
  - i. The proximity to the North Saskatchewan River River Valley;
  - ii. The environmental and recreational resources relied on by the Town in the River Valley;
  - iii. The area is subject to municipal planning documents, such as the River Flats Area Structure Plan ("the ASP") and the IDP which the Town relies on in its own planning decisions; and
  - iv. Portions of the IDP referral area, including Pt. NE 3-49-7 W5M and Pt. SE 3-49-7-W5M ("the Peck Lands") are along a key entrance route to the Town and affect the aesthetics and "first impression" of when approaching the Town.

## **II. FACTS**

### ***A.) Outdoor Storage Facility - Discretionary Use In the IDP Referral Area***

- 9.) The Peck Lands are located within the IDP referral area and were historically zoned as an Agricultural District under the County's Land Use Bylaw 782-12 ("Bylaw 782-12"). Under the County's Agricultural

District, an Outdoor Storage Facility Use was limited to the status of a Discretionary Use.

- 10.) The ASP applies to lands within the IDP referral area, including the Peck Lands. The ASP recognizes the lands subject to the ASP are at risk of flooding from the North Saskatchewan River and may be in the 1:100 flood line. The lands are also identified as preferred recreational lands for the Town and the County. The ASP required storage uses on the Peck Lands to be Discretionary Uses.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit D, pg. 160-162 [Town of Drayton Valley Submissions, Tab 1]

- 11.) In 2015, the Peck Lands were the subject of a development permit application (“the D. P. Application”) for an Outdoor Storage Facility Use. The purpose of the D.P. Application was to allow storage of a large number of modular camp trailers.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit D, pg. 131-133 [Town of Drayton Valley Submissions, Tab 1]

- 12.) The D.P. application was referred to the Town for comments as required by the IDP. The Town opposed approval of the D.P. Application. The County’s own Planning Department, Municipal Planning Commission and Subdivision and Development Appeal Board recognized numerous planning problems created by the D.P. Application.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit D, pg. 134-135 and 176-191 [Town of Drayton Valley Submissions, Tab 1]

- 13.) The D.P. Application was refused at every level by the County. The Alberta Court of Appeal also refused a leave to appeal application arising from the County SDAB’s rejection of the D.P. Application.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit D, pg. 176-191 [Town of Drayton Valley Submissions, Tab 1]

***B.) Outdoor Storage Facility Elevated to Permitted Use Status***

- 14.) In early 2016, shortly after the Court of Appeal refused further appeal of the D.P. Application, the County considered Direct Control Bylaw 892-15 (“Bylaw 892-15”), being an amendment to Bylaw 782-12, to elevate the Outdoor Storage Facility Use to a Permitted Use on the Peck Lands.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, para.9-12 [Town of Drayton Valley Submissions, Tab 1]

- 15.) Bylaw 892-15 was referred to the Town for comment, as required by the IDP. The Town objected to Bylaw 892-15, raising many of the same concerns it had raised regarding the D.P. Application.

Town of Drayton Valley Letter, dated February 17, 2016 [February 21, 2017, Brazeau County Brief, Tab 1]

- 16.) The County Planning Department also expressed numerous planning concerns about Bylaw 892-15. County staff recommended County Council reject Bylaw 892-15. County Council ignored those recommendations and passed Bylaw 892-15 on March 1, 2016 without responding to the Town’s concerns. The Town appealed under s.690 of the MGA.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit A and D [Town of Drayton Valley Submissions, Tab 1]

- 17.) The Town and the County were engaged in mediation in relation to Appeal 16/IMD-03, regarding Bylaw 892-15, when the County moved forward with a full repeal of General Land Use Bylaw 782-12. Bylaw 892-15 was an amendment to Bylaw 782-12. The County's proposed new general Land Use Bylaw was Bylaw 905-16.

Land Use Bylaw 905-16 [November 17, 2016, Binder of Documents provided to the MGB by Brazeau County]

- 18.) The Town wrote to the County raising its concerns about Bylaw 905-16 on June 10, 2016, July 28, 2016 and August 16, 2016. The County did not implement the IDP dispute resolution mechanisms.

Letters dated June 10, 2016, July 28, 2016 and August 16, 2016 from the Town of Drayton Valley to Brazeau County regarding Bylaw 905-16 [February 21, 2017, Brazeau County Brief, Tab 7]

- 19.) On August 16, 2016, the County passed Bylaw 905-16, a new general Land Use Bylaw for the County. Under Bylaw 905-16, the County continued the Permitted Use status of the Outdoor Storage Facility Uses for the Agricultural Districts in the IDP referral area. The County has now taken the position that Bylaw 892-15 was also somehow carried forward with Bylaw 905-16 to make the Peck Lands Direct Control under Bylaw 905-16.

Land Use Bylaw 905-16, Agriculture District, Section 10 [November 17, 2016, Binder of Documents provided to the MGB by Brazeau County, pg. 54-56]

Brazeau County Brief, dated February 21, 2017 para. 16, 22 and 55-57

- 20.) On October 16, 2016, the County passed a second complete repeal and replacement of its general Land Use Bylaw. The new general Land Use Bylaw was Bylaw 923-16. Bylaw 923-16's provisions stated it was

repealing all previous Land Use Bylaws, including Bylaw 782-12 and amendments thereto.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit C [Town of Drayton Valley Submissions, Tab 1]

- 21.) The County takes the position that Bylaw 892-15, which maintains the Permitted Use Status of the Outdoor Storage Facility Use for the Peck Lands, has been carried forward through two complete repeals and replacements of the County's general Land Use Bylaw. The County's position relies on interpretation of s.690(4) of the MGA that provides protection from repeal while a bylaw is "of no force and effect".

Brazeau County Brief, dated February 21, 2017 para. 3 and 55-57

- 22.) The County has refused to acknowledge that the provisions of Bylaw 923-16 govern development on the Peck Lands. Bylaw 923-16, on a plain reading, would have returned the Outdoor Storage Use to the status of a Discretionary Use on the Peck Lands and all lands within the IDP referral area.

Land Use Bylaw 923-16, Section 10-Agriculture District and Section 14-Overlays, pg. 54-56, 89-90 and 156 [November 17, 2016, Binder of Documents provided to the MGB by Brazeau County]

Statutory Declaration of Dwight Dibben, dated March 21, 2017, para. 26 [Town of Drayton Valley Submissions, Tab 1]

### ***C.) The Town's s.690 MGA Appeals***

- 23.) The Town filed a s. 690 MGA appeal in relation to Bylaw 892-15 on March 31, 2016, being Appeal 16/IMD-03.



- 24.) The MGB's April 8, 2016 Notice of Acknowledgement regarding Appeal 16/IMD-03 specifically stated: "Under section 690(4) of the Act, Bylaw 892-15 is of no force and effect."

Letter dated April 8, 2016 from the Municipal Government Board to parties in Appeal 16/IMD-03 [February 21, 2017, Brazeau County Brief, Tab 2]

- 25.) While Bylaw 892-15 was under appeal, the County proceeded to pass Bylaw 905-16, which included a full repeal of Bylaw 782-12 and any amendments. As noted, Bylaw 892-15 is an amendment to Bylaw 782-12.
- 26.) The elevated Permitted Use status of the Outdoor Storage Use in the IDP referral area continued under Bylaw 905-16. The County also now alleges Bylaw 892-15 formed part of Bylaw 905-16 by way of Land Use District Map. As such, Bylaw 905-16 raised many of the same concerns as Bylaw 892-15 regarding detriment within the IDP referral area and the Peck Lands for the Town.

Brazeau County Brief, dated February 21, 2017 para. 16

- 27.) The Town filed a s.690 MGA appeal in relation to Bylaw 905-16 on September 15, 2016, being Appeal 16/IMD-04.

Town of Drayton Valley Notice of Appeal and Statutory Declaration regarding Bylaw 905-16 [February 21, 2017, Brazeau County Brief, Tab 7]

- 28.) The MGA's September 19, 2016 Notice of Acknowledgement regarding Appeal 16/IMD-04 specifically stated "Under section 690(4) of the Act, Bylaw 905-16 is deemed to be of no effect."

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit E [Town of Drayton Valley Submissions, Tab 1]

***D.) The Multiple Repeals of Bylaw 892-15***

- 29.) Bylaw 892-15 was a Direct Control amendment to the underlying general Land Use Bylaw 782-12. The text of Bylaw 892-15 states, *inter alia*, “that Direct Control District Bylaw 892-15 and attached Schedule “A” form part of Land Use Bylaw 782-12, as amended.”

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit A [Town of Drayton Valley Submissions, Tab 1]

- 30.) Bylaw 905-16 repealed Bylaw 782-12 in its entirety. Bylaw 905-16 also specifically repealed all amendments to Bylaw 782-12, of which Bylaw 892-15 was one.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit B [Town of Drayton Valley Submissions, Tab 1]

- 31.) Bylaw 905-16 repealed all Direct Control Bylaws under Bylaw 782-12, unless they were specifically listed in Appendix 17 of Bylaw 905-16. Bylaw 892-15 was not listed in Appendix 17.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit B, s.13.6.6 and Appendix 17 [Town of Drayton Valley Submissions, Tab 1]

- 32.) On October 18, 2016, the County passed Bylaw 923-16, repealing all previous versions of its general Land Use Bylaw, including a further repeal of Bylaw 782-12 and all amendments thereto.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit C [Town of Drayton Valley Submissions, Tab 1]

- 33.) As with Bylaw 905-16, any Direct Control districts that were to be carried forward from Bylaw 782-12 or Bylaw 905-16 had to be specifically listed

in Appendix 17 of Bylaw 923-16. Bylaw 892-15 was not listed in Appendix 17.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit C, s.13.6.6 and Appendix 17 [Town of Drayton Valley Submissions, Tab 1]

- 34.) On a plain reading of the County bylaws, Bylaw 782-12, and all amendments, was repealed twice. Bylaw 892-15 was omitted from the list of District Control bylaws exempt from repeal twice.

### **III. STATEMENT OF ISSUES**

- 35.) The MGB directed in DL 004/17 that the parties file submissions on the following issues:

A.) Does section 690(4) of the MGA prevent a municipality from amending or repealing a provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal from the date the Board receives the notice of appeal and the statutory declaration under section 1(a) until the date it makes its decision?

B.) If section 690(4) of the MGA did not prevent Brazeau County from repealing the bylaws in dispute, did Brazeau County in fact repeal Bylaws 892-15 and 906-15?

#### IV. ARGUMENT

##### ***A.) Does s.690(4) Permit Amendment or Repeal of the Bylaw subject to a s.690 Appeal ?***

###### *i.) A Plain Reading of s.690(4) of the MGA*

- 36.) Section s.690 MGA appeals are limited in scope to challenges to land use bylaws or statutory plans. As such, s.690 was drafted with the clear intent to apply exclusively to municipal legislation passed under Part 17 of the MGA. No exception applies to Land Use Bylaws.

*Municipal Government Act, R.S.A. 2000, c.M-26, Section 690 [February 21, 2017, Brazeau County Authorities, Tab 13]*

- 37.) Section 690(4) of the MGA states:

“When the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), the provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal is deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the Board receives the notice of appeal and statutory declaration under subsection (1)(a) until the date it makes a decision under subsection (5).” (*emphasis added*)

*Municipal Government Act, R.S.A. 2000, c.M-26, Section 690 [February 21, 2017, Brazeau County Authorities, Tab 13]*

- 38.) The County submissions regarding the MGB’s lack of jurisdiction to grant a stay are irrelevant. Section 690(4) does not grant the MGB jurisdiction to grant a stay of the legislation appealed under s.690. The stay is created

by the Legislature through s.690(4). A stay is automatically triggered by the filing of a s.690 appeal.

- 39.) The issue in this preliminary application is the extent, or scope, of the legislative stay created by s.690(4).
- 40.) The County asserts that s.690(4) cannot limit a municipality's ability to pass and repeal bylaws. The distinction between passing, repeal and amendment is likely unhelpful. The real question is whether a bylaw subject to a s.690 appeal can be altered in any way.

*Municipal Government Act*, R.S.A. 2000, c.M-26, Section 191 [Town of Drayton Valley Authorities, Tab E]

- 41.) Section 52 of the *Constitution Act* also contains language that renders legislation of "no force and effect". Upon operation of s.52, there is no question the provision ceases to have force of law. The most common impact of a s.52 "no force and effect" ruling is the later repeal of the statutory provision. However, as established in *R v. Vader*, the provision continues to exist until it is actually repealed.

*Constitution Act*, 1982, RSC 1985, Section 52 [Town of Drayton Valley Authorities, Tab C]

*R v. Vader*, [2016] A.J. No.1163 (Q.B.) [Town of Drayton Valley Authorities, Tab B]

- 42.) The provisions of the *Interpretation Act* suggest that an enactment that is not in force is subject to repeal. The repeal does not, however, revive the law being repealed in any way.

*Interpretation Act*, R.S.A. 200, ch.I-8, Section 35 and 37 [Town of Drayton Valley Authorities, Tab D]

- 43.) As such, there is some support in general law for the County's position in Appeal 16/IMD-04 that even when a bylaw is not in force or effect it can be repealed.
- 44.) There is no support for the position that s. 690(4) does not operate in an identical manner in Appeal 16/IMD-03 regarding Bylaw 892-15.

*ii.) Consistency in the Application of the Interpretation of s.690(4) of the MGA*

- 45.) In Appeal 16/IMD-03, the County argues for a very different interpretation of s.690(4). On that appeal the County asserts Bylaw 892-15 is "suspended" but once it is no longer suspended would somehow form part of the second new general bylaw.

Brazeau County Brief, dated February 21, 2017 para. 57

- 46.) In Appeal 16/IMD-04, the County takes the position that "municipalities can repeal a bylaw which is the subject of a section 690 appeal".

Brazeau County Brief, dated February 21, 2017 para. 2, 47-48 and 57

- 47.) The County is relying on competing, and essentially opposite, interpretations of s. 690(4) as between the two appeals. Nothing in the language of s.690(4) that would support such a distinction.
- 48.) The County's preservation or suspension arguments in Appeal 16/IMD-03 appear to be based, in part, on the language of the MGB's April 9, 2016 Notice of Acknowledgement. However, the County received the same notice in Appeal 16/IMD- 04 on September 19, 2016.

Letter dated April 8, 2016 from the Municipal Government Board to parties in Appeal 16/IMD-03 [February 21, 2017, Brazeau County Brief,

Tab 2]

Statutory Declaration of Martino Verhaeghe, dated February 16, 2017, para.4 and Exhibit A [February 21, 2017, Brazeau County Brief, Tab 4]

Brazeau County Brief, dated February 21, 2017 para. 54-55

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit E [Town of Drayton Valley Submissions, Tab 1]

- 49.) Further, the MGB's Notice of Acknowledgments are simply referring to s. 690(4) of the MGA. The Notices do not, by themselves, create any different or greater impact than s.690(4) itself. The Notices certainly do not create any differential impact as between Appeal 16/IMD-03 and Appeal 16/IMD-04.
- 50.) If s.690(4) does not prevent a municipality from repealing a bylaw, that finding must apply equally in Appeal 16/IMD-03 and Appeal 16/IMD-04. As discussed in greater detail below, if s.690(4) of the MGA does not prevent a municipality from repealing and replacing bylaws under appeal, Bylaw 892-15 has clearly been repealed by the express language of both Bylaw 905-16 and 923-16.
- 51.) If the County's alternative proposed interpretation of s.690(4) applies, and s. 690(4) has a suspensory or preservative impact that would remove a bylaw under appeal from the impact of a new bylaw that contemplates its repeal. However, such a suspensory or preservative effect applies equally to Bylaw 892-15 and 905-16 and preserves s.690 appeal rights regardless of the County's attempts at repeal.
- 52.) Subject to the practical considerations outlined, below, the Town is willing to move forward based on the application of either interpretation. However, the adopted interpretation of s.690(4) must be applied equally and consistently as between both appeals.

***B.) If repeal is permitted, have Bylaw 892-15 and 905-16 in fact been repealed?***

*i.) Multiple Repeals of Bylaw 892-15*

53.) If s. 690(4) permits a responding municipality to repeal a bylaw that is subject to a s.690 appeal, there cannot be any serious dispute that the County has fully repealed Bylaw 892-15. Indeed, the County has repealed Bylaw 892-15 twice.

54.) Bylaw 892-15 is merely an amendment to a general Land Use Bylaw, being Bylaw 782-12. Bylaw 892-15 forms part of Bylaw 782-12.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit A  
[Town of Drayton Valley Submissions, Tab 1]

55.) Bylaw 905-16 had the clear purpose, and effect, of fully repealing Bylaw 782-12 and all its amendments:

i. "...Bylaw 782-12, and amendments, are hereby repealed"; and

ii. "This Land Use Bylaw comes into effect on the date of its third reading. At that time, the former Bylaw 782-12, and its amendments, shall cease to apply to new subdivision and development in Brazeau County."

56.) Bylaw 905-16 was not silent in regard to whether Direct Control Districts could be, or were, carried forward from Bylaw 782-12. Bylaw 905-16 was explicit in stating that only DC Bylaws specifically listed and attached would be carried forward:



“Brazeau County Land Use Bylaw 782-12 is hereby repealed....Brazeau County shall continue to recognize Direct Control Bylaws listed and attached under Appendix 17.”

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit B, pg. 1 [Town of Drayton Valley Submissions, Tab 1]

- 57.) Appendix 17 of Bylaw 905-16 does not list Bylaw 892-15 as a Direct Control bylaw being carried forward into Bylaw 905-16. The purpose and regulations of any Direct Control districts also fail to appear in the Appendices, contrary to s. 13.6.6 of Bylaw 905-16.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit B, pg. 88 and 156 [Town of Drayton Valley Submissions, Tab 1]

- 58.) Reading these sections together, in the purposive and contextual manner required for modern statutory interpretation, the only available conclusion is that if a DC Bylaw that was passed under Bylaw 782-12 was not specifically listed in Appendix 17, it was repealed.

*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 [February 21, 2017, Brazeau County Authorities, Tab 11]

*Sullivan on the Construction of Statutes*, 6<sup>th</sup> Ed [February 21, 2017, Brazeau County Authorities, Tab 14]

- 59.) There was no statutory language whatsoever in Bylaw 905-16 that would have preserved Bylaw 892-15. As such, the County’s position that Bylaw 892-15 has somehow been suspended or preserved is directly contradicted by the legislative language used, an approach summarized by the Court in *Bathhurst* as follows:

*“The appellant asks this Court to say that what has been expressly excluded has at the same time been impliedly retained. This is not a logical proposition....”*

*Bathurst Paper Ltd. v. Minister of Municipal Affairs (N.B.)* (1971), 22 D.L.R. (3d) 115 (S.C.C.), pg.4 [Town of Drayton Valley Authorities, Tab A]

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit C [Town of Drayton Valley Submissions, Tab 1]

- 60.) All of the above noted repeal provisions, and the specific exclusion of Bylaw 892-15 as a carried forward DC Bylaw, were repeated with identical language, in Bylaw 923-16. Indeed, although Bylaw 782-12 and all its amendments had already been repealed, Bylaw 923-16 restates the provisions of its repeal and replacement effective October 16, 2016.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit B and C [Town of Drayton Valley Submissions, Tab 1]

- 61.) Principles of statutory interpretation require that silences, or exclusions, be assigned significance. They are not to be considered errors or omissions but significant legislative decisions. The exclusion of Bylaw 892-15 from Appendix 17 cannot be ignored. Further, applicable principles require that a restatement of a repeal, such as is found in Bylaw 923-16, be presumed to have a purpose. Taking all relevant provisions as a whole, Bylaw 892-15 cannot be said to have been impliedly carried forward.
- 62.) The County has offered evidence from its Planning Director regarding what was actually intended in relation to the suspension, or lack of repeal, of Bylaw 892-15. This evidence should be regarded as irrelevant. Even in cases where a Court is willing to consider evidence regarding the actual legislator’s intent, that evidence is given limited weight. Mr. Verhaeghe is

not the legislator and his opinions cannot be relied upon to interpret, affect or modify the language adopted in the bylaws in question.

*ii.) Bylaw 905-16 Repealed*

- 63.) Bylaw 923-16 is the second version of the County's General Land Use Bylaw, passed on October 18, 2016. Bylaw 923-16 contained almost identical repeal language to Bylaw 905-16. Bylaw 923-16 also repeated, verbatim, the provisions requiring DC Bylaws to be listed in Appendix 17 if they were to be carried forward into the new general Land Use Bylaw. Bylaw 892-15 is not listed as being carried forward.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit C, s.1.3.1, s.1.5.1-1.5.2, s.13.6.6 and Appendix 17, pg. 1, 88 and 157 [Town of Drayton Valley Submissions, Tab 1]

- 64.) The County takes the position that the Bylaw 923-16 is fully effective to repeal Bylaw 905-16 and that s.690(4) cannot override these repeal provisions or prevent their operation.

Brazeau County Brief, dated February 21, 2017 para. 47-53

- 65.) Given that the Bylaw 923-16 repeal provisions are identical to those found in Bylaw 905-16, an acceptance of the County's position in Appeal 16/IMD-04 requires the repeal language in Bylaw 905-16 to be given effect, including in repealing Bylaw 892-15 for the purposes of 16/IMD-03.

*iii.) Land Use Maps Are Overridden by Express Repeal Language*

- 66.) In what appears to be an alternative argument to the position that Bylaw 892-15 was somehow preserved, or suspended, by s.690(4) when Bylaw 905-16 was not, the County submissions suggest that Bylaw 892-15 was

somehow carried forward merely by the Peck Lands being assigned a “Direct Control” coding in Land Use Map 47-C.

Brazeau County Brief, dated February 21, 2017 para. 56

Statutory Declaration of Martino Verhaeghe, dated February 16, 2017, para.13 and 19 [February 21, 2017, Brazeau County Brief, Tab 4]

- 67.) This position is entirely inconsistent with the position that Bylaw 892-15 was not listed in Appendix 17 due to it being “suspended” by s.690(4). Any assertion that Bylaw 892-15 was carried forward by Bylaws 905-16 and 923-16, rather than by the operation of s.690(4), is directly contrary to the explicit provisions of Bylaw 905-16 and 923-16. Both bylaws:
- i. Explicitly require any DC Bylaws being carried forward to be listed and attached in Appendix 17; and
  - ii. Assign Land Use Maps lesser status than the legislative text of the Bylaw.

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit B, s.1.5.1-1.5.6, s.1.10.15 and Appendix 17, pg.1, 4 and 156 [Town of Drayton Valley Submissions, Tab 1]

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit C, s.1.5.1-1.5.6, s.1.10.15 and Appendix 17, pg.1, 4 and 156 [Town of Drayton Valley Submissions, Tab 1]

- 68.) Land use maps cannot override explicit legislation, as acknowledged by the provisions adopted by the County itself:

“In the case of any conflict between the text of this Bylaw and any maps or drawings used to illustrate any aspect of this Bylaw, the text shall govern.”

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit B, s.1.10.15, pg.4 [Town of Drayton Valley Submissions, Tab 1]

Statutory Declaration of Dwight Dibben, dated March 21, 2017, Exhibit C, s.1.10.15, pg.4 [Town of Drayton Valley Submissions, Tab 1]

- 69.) As such, the existence of a Land Use Map showing the Peck Lands as a DC district cannot, by itself, carry forward a DC bylaw into Bylaw 905-16 or Bylaw 923-16 in the face of explicit repeal language to the contrary.
- 70.) The only route by which Bylaw 892-15 could possibly have been carried forward is by way of the County's suggested "suspension" or "preservation" interpretation of s.690(4). However, such "preservation" would have to apply in both appeals.

*iv.) Policy Reasons for the MGB to Acknowledge the Repeal of all Bylaws Currently Subject to Appeal*

- 71.) The Town shares many of the County's concerns about unnecessary use of MGB, and party, resources in the context of the current proceeding. Those were the very reasons the Town requested this preliminary jurisdictional issue be addressed in both Appeal 16/IMD-03 and Appeal 16/IMD-04.
- 72.) The Town does not take issue with the County's cited authorities regarding the principles that apply to determine mootness in a proceeding. However, mootness is only established in this application if the MGB accepts that s.690(4) allowed repeal of both Bylaw 892-15 and Bylaw 905-16.
- 73.) As has been highlighted, the County's positions seek a selective application and interpretation of s.690(4). The County would have the

MGB allow it to rely on a suspensory or preservative effect of s.690(4) to protect Bylaw 892-15 from repeal – while requesting an interpretation of s.690(4) in Appeal 16/IMD-04 that would subject Bylaw 905-16 to the full force and effect of the County’s chosen repeal language.

- 74.) The issues before the MGB are, primarily, directed at questions of MGB jurisdiction and the extent to which a responding municipality can remove the MGB’s jurisdiction by way of legislative actions undertaken after a s.690 appeal is filed. Any interpretation that allows a responding municipality to nullify the MGB’s role and jurisdiction must be approached carefully. It certainly cannot be applied selectively.
- 75.) Despite the concerns of under cutting the MGB’s role there may be cases where, permitting a bylaw repeal may in fact resolve the very issue before the MGB. The County’s suggestion that repeal is the “maximum relief” even the MGB can grant is a fair characterization of s.690(5)(b) powers.
- 76.) The County only wishes to acknowledge repeal, or “maximum relief”, on one of the Bylaws appealed when both were the subject of explicit repeal language.
- 77.) The County continues to assert that there is a “live” dispute regarding the detriment caused by Bylaw 892-15 because the County would “incorporate” the wording of Bylaw 892-15 into Bylaw 923-16 if they defend a merit hearing.

Brazeau County Brief, dated February 21, 2017 para. 57

- 78.) The County has suggested that Bylaw 892-15 was carried forward by the Land Use Maps in Bylaws 905-16 and 923-16, rather than by the operation of s.690(4). If that position is accepted, the MGB cannot treat either appeal as moot, as for Bylaw 892-15 to survive within Bylaw 923-

16, it must first be established to form part of Bylaw 905-16 prior to its repeal.

- 79.) Given the extensive submissions of the County on the extent to which a municipality must remain unfettered in the exercise of its repeal powers, it is entirely open to the MGB to apply that position equally in Appeal 16/IMD-03 as in Appeal 16/IMD-04 and find that both bylaws subject to appeal have been repealed, rendering both merit appeals moot.

Brazeau County Brief, dated February 21, 2017 para. 62-69

- 80.) The Town has made best efforts to ensure the County is aware Bylaw 923-16, in the form passed October 16, 2016, is acceptable to the Town. In particular, if the s.14.2 Overlay does, indeed, apply to all lands in the IDP referral area, including the Peck lands, it is unclear why the County has any policy or planning reason to try to maintain the dispute over Bylaw 892-15 as a live issue.

Statutory Declaration of Martino Verhaeghe, dated February 16, 2017, Exhibit F [February 21, 2017, Brazeau County Brief, Tab 4]

- 81.) The Town has been clear in stating that whichever interpretation the MGB adopts of s.690(4), it must be applied equally to both appeals. The net results of each option would be as follows:

i. Repeal is Allowed by s.690:

- Both Bylaw 892-15 and Bylaw 905-16 would be found to be repealed.
- As Bylaw 892-15 was not carried forward, the Outdoor Storage Facility use in the IDP referral area, including the Peck Lands, is governed solely by Bylaw 923-16.

- The County's various legislative amendments have returned the Outdoor Storage Facility use in the IDP referral area to the status it previously had under Bylaw 782-12, that of a discretionary use.
- Both appeals are moot and there is no need to proceed with merit hearings.

ii. Suspensory/Preservative Interpretation of s.690:

- Bylaw 892-15 remains an existing, although suspended, piece of legislation that was carried forward into both Bylaw 905-16 and Bylaw 923-16.
- In this approach, Bylaw 905-16 was also suspended or preserved effective September 19, 2017.
- As Bylaw 905-16 is in suspended existence, it did not repeal Bylaw 782-12 and was not repealed by Bylaw 923-16.
- In this case, both appeals have "live" issues and both merit hearings must go forward.

## **V. RELIEF REQUESTED**

- 82.) The Town merely seeks an equal and consistent application of s.690(4) of the MGA as between the two appeals.
- 83.) If the County's positions that it has full ability and jurisdiction to repeal bylaws that are the subject of s.690 appeals is accepted for Bylaw 905-16, it must be accepted for Bylaw 892-15. If that is the case, the IDP referral area and the Peck Lands are governed entirely by Bylaw 923-16 and there is no need for merit hearings in either appeal.



- 84.) If the MGB determines that s.690(4) has a suspensory or preservative effect that shields a bylaw under repeal from the impact of repeal provisions, that finding must apply equally in both Appeal 16/IMD-03 and Appeal 16/IMD-04. If that is the case, neither appeal can be found moot and merit hearings must proceed in both appeals.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24<sup>th</sup> DAY of MARCH, 2017.

**HUTCHISON LAW**

Per: \_\_\_\_\_

**JANET L. HUTCHISON**

## **VI. LIST OF TABS**

1.) Statutory Declaration of Dwight Dibben, dated March 21, 2017

### **2.) Authorities**

A) *Bathurst Paper Ltd. v. Minister of Municipal Affairs (N.B.)* (1971), 22 D.L.R. (3d) 115 (S.C.C.)

B) *R v. Vader*, [2016] A.J. No.1163 (Q.B.)

C) *Constitution Act*, 1982, RSC 1985

D) *Interpretation Act*, R.S.A. 200, ch.I-8

E) *Municipal Government Act*, R.S.A. 2000, c.M-26